

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER BOHN**  
**(Mailed 4/11/2006)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Authority to Implement Default CPP Rate  
Options For Large Customers.

Application 05-01-016  
(Filed January 20, 2005)

Application of San Diego Gas & Electric  
Company (U902-E) for Adoption of a 2005  
Default Critical Peak Pricing Structure for  
Commercial and Industrial Customers with Peak  
Demands Exceeding 300 kW.

Application 05-01-017  
(Filed January 20, 2005)

Southern California Edison Company's  
(U338-E) Application for Approval of Rate  
Design Proposals for Large Customers.

Application 05-01-018  
(Filed January 20, 2005)

(See Appendix A for a list of appearances.)

**DECISION ADOPTING CRITICAL PEAK PRICING SETTLEMENTS FOR 2007**

**1. Summary**

This decision adopts the proposed settlements presented by the parties to institute improved critical peak pricing. Each utility is ordered to file an advice letter to implement the terms of its settlement with an effective date of January 1, 2007. In addition this decision requires the utilities to provide all of the

customers in the affected classes with educational material and a bill analysis at the end of 12 months into this program.

## **2. Procedural History**

On April 21, 2005, the Commission issued Decision (D.) 05-04-053. Ordering Paragraph 2 directed the utilities to “file new critical peak pricing proposals including testimony, in these dockets on August 1, 2005, consistent with the principles adopted today.” The key ordering paragraphs of that decision are as follows:

3. In its August 1, 2005 filing, each utility shall designate the specific system conditions that will trigger a critical peak pricing event call, consistent with the system conditions used in its rate design and resource adequacy requirements.
4. In each August 1, 2005 filing, the number of events shall be determined based on the forecasts and system conditions used to allocate revenue to the critical peaks.
5. In their August 1, 2005 filing, the utilities shall calculate rates for the non-critical peak hours based on an adopted revenue requirement for all hours that reflects costs in a year with no critical peak events and separately establish the rate for the critical peak period to reflect the utility's anticipated marginal cost to procure power during critical peak periods.
8. Upon completion of these rate design proceedings for each utility, bundled customers shall be placed on a critical peak pricing tariff as a default, with the ability to convert without cost the standard TOU rates adopted for each utility.

On August 1, 2005, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) filed new proposals and associated testimony to implement default critical

peak pricing tariffs for customers with demand in excess of 200 kW in compliance with D.05-04-053. On August 24, 2005, the Administrative Law Judge (ALJ) held a prehearing conference. Various supplemental exhibits were served prior to non-utility opening testimony on October 6, 2005. On October 19, 2005, parties served rebuttal testimony.

On September 12, 2005, pursuant to Rule 51.1(b), notice was provided to all parties that an initial settlement conference would take place on September 22, 2005. Follow-up settlement discussions were held amongst most of the active parties in subsequent weeks through a series of conference calls. On October 20, 2005, the parties to the settlement discussions reached agreements in principle on the terms of the settlements. After receiving notice of the agreements, ALJ Cooke suspended the hearings scheduled for the week of October 31, 2005.

On November 14, 2005, a motion to accept the settlement by the Building Owners and Managers Association (BOMA) of California, California Manufacturers and Technology Association (CMTA), City of San Diego, Energy Producers and Users Coalition (EPUC), Indicated Commercial Parties (ICP), Industrial Environmental Association, J.C. Penney Company, Inc. (Penney), SDG&E, Silicon Valley Leadership Group, and Wal-Mart Stores, Inc. (Wal-Mart) was filed. On November 14, 2005, a separate motion to accept the settlement by the Agricultural Energy Consumers Association, BOMA of San Francisco and of California, California Farm Bureau Federation, California Large Energy Consumers Association, California League of Food Processors, CMTA, California Retailers Association, EPUC, ICP, Penney, Kinder Morgan Energy Partners, L.P. (Kinder), Lowe's Companies, Inc., PG&E, San Francisco Bay Area Rapid Transit District (BART), SCE, Wal-Mart, and Western Power Trading Forum was filed. Comments on the settlements were filed by The Utility Reform Network (TURN)

and PG&E. Replies were filed by SCE, SDG&E, PG&E, and jointly by Penney, Kinder, and Wal-Mart.<sup>1</sup> Copies of both settlement agreements are attached.

PG&E filed a petition to modify Ordering Paragraph 8 of D.05-04-053 on November 14, 2005. SDG&E filed a response on November 30, 2005, and PG&E filed a reply on December 7, 2005.

One day of evidentiary hearings was held on the settlements on November 17, 2005. All exhibits were received into evidence at that time. By stipulation of the parties, late-served exhibits were also received into evidence.

### **3. Outstanding Procedural Matters**

We affirm all rulings made by the ALJ up to this point in the proceeding. To the extent that any motions remain outstanding, all such motions are denied.

### **4. Settlement Agreements**

Two settlements were filed, one addressing both PG&E and SCE, the other addressing only SDG&E. Each settlement will be addressed in turn. Many features of the initial proposals are elements of the settlements, so we do not separately describe the initial proposals of the utilities.

#### **4.1. PG&E and SCE**

The proposed settlement would establish a voluntary critical peak pricing tariff structure, rather than a default rate as anticipated in D.05-04-053. Bundled, firm service customers served on interval meters with peak demands equal to or greater than 200 kW would be eligible to select service under the voluntary critical peak pricing rate. Bundled customers who are participating in, or who

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<sup>1</sup> The motion for acceptance of the late filed reply comments by Penney, Kinder and Wal-Mart is granted.

elect to participate in, certain other demand response programs would not be eligible to enroll on the critical peak pricing rates as long as that participation continues. For PG&E, customers participating in the Demand Bidding Program (E-DBP), the Base Interruptible Program (E-BIP), the Business Energy Coalition program (E-BEC), the Non-Firm Program, and the California Power Authority Demand Reserves Partnership program would not be eligible for the critical peak pricing rates. For SCE, customers participating in Super Off-Peak Rates (SOP), Departing Load, Demand Bidding Program (DBP), Optional Binding Mandatory Curtailment (OBMC), I-6, Base Interruptible Program (BIP), Scheduled Load Reduction Program (SLRP), California Demand Reserves Program, and Real-Time Pricing (RTP) would not be eligible for the critical peak pricing rates. Direct access customers, and customers (such as BART) that receive electric power from third parties, will not be eligible for the critical peak pricing rates. Net metered customers, standby customers, customers on the Agricultural Internal Combustion Engine Conversion Incentive Rate (Ag-ICE), and customers without communication links are not eligible for the critical peak pricing rates.

The PG&E rate would become effective June 1, 2006, if approved before January 31, 2006 and would replace PG&E's existing voluntary critical peak pricing tariff special condition in current schedules. For PG&E, the rates applicable during critical peak pricing events would be based on PG&E's rate proposals for voluntary critical peak pricing presented in its August 1, 2005 testimony in this case (Exhibit 1000), and as revised in Attachment 2 to its October 19, 2005 rebuttal testimony (Exhibit 1004). For PG&E, the critical peak pricing event rate would be a rate rider of 75 cents per kWh for all Light and Power rate schedules and 37.5 cents per kWh for the AG 4 C and F, and AG 5 C and F rate schedules that would be added to the customer's normal TOU rate.

The rate rider will be applied to the generation component of participating customer bills. Proposed tariffs are set forth in Exhibit 1019. The critical peak pricing tariff rates applicable during non-critical peak pricing event hours are subject to combined on-peak demand and energy charge reductions stated as a rate rider to the customer's normal TOU rate for the summer period from May 1 to October 31. PG&E will provide bill protection for new customers who select the settlement rate through the conclusion of the first complete summer of participation. The rationale behind bill protection is to allow customers additional exposure to the critical peak pricing tariff without risk, while they learn whether or not the tariff works for their operations.

The SCE rate would become effective the first Sunday in June 2007 and would replace the special condition in SCE's existing schedules TOU-GS-2, TOU-8, TOU-PA, and TOU-PA-5. SCE's existing critical peak pricing rates for large customers would be closed and customers on them would be converted to the new tariffs. SCE's methodology is generally similar to PG&E's, and the details are found in Exhibit 1005. Implementing tariffs were submitted as Exhibit 1026. SCE does not provide customer bill protection.

Neither utility will provide participation credits to participating customers or reflect hedging premiums for non-participating customers. Both utility rate designs are designed to be revenue neutral by customer class.

The maximum number of critical peak pricing events in the respective summer seasons for each utility is 15. PG&E's summer season runs from May 1 through October 31, while SCE's summer season runs from the first Sunday in June to the first Sunday in October. In their respective summer seasons, PG&E and SCE expect, but are not obligated, to call at least 12 events in a given summer season but they will not call an event on more than three consecutive

weekdays within one work week. Critical peak pricing events will last four hours, from 2:00 p.m. to 6:00 p.m.

PG&E may call a critical peak pricing event depending on the day-ahead maximum temperature forecast for its service area, high demand, high day-ahead prices, or California Independent System Operator alerts. However, PG&E will retain discretion not to call an event even if one or more of these criteria are met. SCE may call an event on a day-ahead basis if day-ahead forecast system demand is within 9% of SCE's forecast annual system peak demand, and forecasted generation heat rates indicate that power supplies are limited. PG&E and SCE will attempt to notify all critical peak pricing customers of the event by 3:00 p.m., the day before the event, using two methods: (1) a telephone call, page, fax, or e-mail depending on the choice of the customer; and (2) a dedicated website informational display that will be updated in real time with the critical peak pricing status.

PG&E's cost for its existing program is \$243,000 annually for administrative costs, and \$150,000 annually for measurement costs. These costs include the costs to prepare bill analyses for customers based on their actual usage. To implement the rates set forth in the settlement, PG&E estimates incremental costs at \$1,648,480, \$388,586, and \$370,167 in the first through third years of operation, respectively. If measurement and evaluation is handled on a statewide basis, then the annual cost should be reduced by \$150,000. Thus, the total cost of implementing a critical peak pricing tariff for PG&E, assuming a statewide evaluation, is \$1,991,480, \$631,587, and \$613,167 in years one through three, respectively. SCE's estimates its first year (2007) implementation cost at \$1,816,800, although this estimate was developed for a default rate rather than a voluntary opt-in rate. In Application (A.) 05-06-006 et al., the parties reached a

settlement on the proper level of funding for 2006-2008 demand response programs. Table 2 of the settlement exhibit in A.05-06-016 et al. filed on December 2, 2005, identifies the agreed upon funding level for SCE's existing critical peak pricing program at \$53,000 annually.

The settlement proposes that PG&E be authorized to flow the authorized revenue requirement approved for its critical peak pricing program, authorized either in this application or A.05-06-006 et al., through its Utility Generation Balancing Account (UGBA), for recovery from its bundled customers only. To the extent that critical peak pricing participation produces lower total billed revenue than would have been billed under the participants' standard tariffs, any such revenue reductions (together with any fuel and purchased power cost savings that result from reduced usage during critical peak pricing events) would be reflected in PG&E's Energy Resource Recovery Account (ERRA) and UGBA through the normal operations of these accounts.

The settlement recommends that all billing and customer communication system infrastructure modifications, administrative, and customer education expenses for SCE be recorded in SCE's Advanced Metering and Demand Response Memorandum Account (AMDRMA) and then transferred upon approval into SCE's ERRA for recovery as prescribed by D.05-01-056. SCE proposes though that the costs be recovered from bundled customers only. To the extent that critical peak pricing participation produces lower total billed revenue than would have been billed under the participants' standard tariffs, any such revenue reductions (together with any fuel and purchased power cost savings that result from reduced usage during critical peak pricing events) would be reflected in SCE's ERRA through the normal operations of that account.



**4.2. SDG&E**

The proposed SDG&E settlement is in many ways similar to that of SCE and PG&E. Unlike the SCE/PG&E settlement, the proposed SDG&E settlement contains a default critical peak pricing tariff applicable to all commercial and industrial customers with loads greater than or equal to 200 kW. This eligibility includes about 1,800 meters. Yet this default position is carefully nuanced so that no customer will be switched to the new default unknowingly or without a very visible opportunity to opt out. As part of the settlement, SDG&E will make good faith efforts to establish two-way, confirmable contact with each eligible customer before enrolling the customer on the default rate. During its customer contact, SDG&E will provide, to the extent possible, bill impact information as well as information on demand response programs for which the customer is eligible. In the event that SDG&E is unable to establish contact with the customer, the settlement provides that SDG&E shall not place that customer on the default critical peak pricing tariff. The burden is on SDG&E to demonstrate that contact occurred in the event of dispute.

Customers enrolled on the critical peak pricing tariff will receive bill protection for the first 12 months of service and are required to remain on the tariff for a full 12 months. Under SDG&E's settlement, customers will also have the option of reserving capacity, and paying a capacity fee; the portion of a customer's demand for which capacity is reserved will not be subject to critical peak pricing tariffs. The maximum number of critical peak pricing events shall not exceed 15, while the minimum number shall not fall below four.

Customers enrolled on SDG&E's existing Schedule EECC-CPP (voluntary critical peak pricing) prior to a Commission decision in this proceeding will remain under that program until their contracts expire. Upon contract

expiration, those customers will default to the critical peak pricing tariff or may opt out. After the Commission renders a decision approving the Settlement Agreement, Schedule EECC-CPP will be closed to new customers eligible for the default critical peak pricing tariff, but Schedule EECC-CPP-E will remain available.

SDG&E's cost for its existing critical peak pricing program is \$253,897 for operations and maintenance costs, \$42,422 for capital, and \$82,158 for measurement costs in 2006. (Exhibit 1022.) These costs do not include the costs to prepare bill analyses for customers based on their actual usage. Exhibit 1009 identified that SDG&E expected the cost to implement a default critical peak pricing tariff to be a total of \$1,256,000. The settlement does not address program costs, thus it is unclear whether the total identified in Exhibit 1009 is incremental to the existing program or inclusive of those costs.

For ratemaking purposes, any critical peak pricing revenue over- or under-collections are proposed to flow through the SDG&E ERRRA, administrative costs will be recovered through the AMDRMA, and the resource adequacy requirements value of the program will be allocated in accord with the final decision regarding resource adequacy in Commission proceeding Rulemaking 04-04-003.

## **5. Evaluation of the Settlement Agreements**

Because the proposed settlements agreement are not uncontested "all-party" settlements, we evaluate them under the standards set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure. Rule 51.1(e) requires that the "settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

### **5.1. Reasonableness in Light of the Whole Record**

The Settling Parties in both settlements state that the settlements are reasonable in light of the whole of the record. In the PG&E/SCE settlement, the parties state that the outcome is reasonable because it constitutes compromises among the utilities and the various commercial, industrial, and agricultural customers that would be affected by the tariffs. The parties state that “the cost estimates presented for a PG&E opt-out CPP [critical peak pricing] program versus the cost estimates included in the CPP settlement for PG&E’s opt-in CPP program indicate that the latter is significantly more cost effective.” (PG&E/SCE Motion, p. 4.)

In the SDG&E settlement, parties state that because all testimony has been served, parties are well aware of each others positions, and that the settlement is “the best possible implementation of D.05-04-053 in that it addresses the concerns of the customers subject to the Tariff, substantially complies with the directive in D.05-04-053, and maintains the Commission’s positive momentum in achieving demand response objectives.” (SDG&E Motion, p. 4.)

TURN is the only party to oppose the settlements. TURN argues that it is not reasonable to approve the settlements because it is unlikely that customers who contribute disproportionately to peak demand will remain on the rates proposed in the settlements, the settlement rate designs may increase on-peak use on non-critical peak pricing days, the settlements unfairly shift costs onto bundled customers, and adopting the settlements may not promote installation of energy efficiency and load shifting measures. TURN did not present testimony in this proceeding to provide an analysis of how the settlements result

in the outcomes it predicts. TURN does point us to its testimony in A.05-06-006 et al. and its conclusion that, “given the evidence of the relative dearth of participation in voluntary programs, TURN suggests that it would be more cost-effective to institute a default CPP tariff in combination with technical assistance/technical incentive payments to assist customers with achieving demand response, rather than to continue with both voluntary CPP and other voluntary programs.” (TURN Comments, pp. 7-8.) TURN also reminds us of the forecasted load reductions by PG&E in this phase of the proceeding of 21-35 megawatts (MW) under the settlement rates, versus approximately 50 MW under a default rate, and that SCE and SDG&E did not offer projections of load reduction under the settlement rates. TURN discusses how “structural winners,” those customers who received reduced bills without reducing their usage, are the only customers likely to opt-in to a voluntary rate, or stay on a default rate that has no penalty from opting out, and are unlikely to result in much, if any, load reduction. TURN discusses how SDG&E’s rate design results in non-critical peak pricing day rates that are below SDG&E’s marginal cost of energy, which would promote increased usage on those days.

SDG&E responds to TURN’s argument by pointing out that because the rates are designed to be revenue neutral by customer class, any slight deviation from the estimated marginal cost of energy is minor (less than 5%) and could be adjusted for in subsequent rate design proceedings. SCE also responds to the argument by TURN that lower rates during non-critical peak pricing periods would result in higher usage. SCE replies that “TURN’s arguments regarding load impacts are contradictory. On the one hand, TURN devotes an entire section of its comments to espousing its belief that the proposed CPP rates will not promote significant demand response, despite customers generally facing

CPP pricing \$0.50-\$0.75/ [kilowatt-hour] kWh above non-CPP on peak prices. Yet TURN argues in the same section that the corresponding minor offset in all remaining on-peak hour prices could lead to significant increases in on-peak consumption. It is inconsistent for TURN to suggest that no load reduction will result from significantly higher prices, but load increases will occur as a result of relatively minor price decreases.” (SCE Reply, p. 4.) PG&E also takes exception to TURN’s comments that only structural winners will enroll on the settlement critical peak pricing rates. PG&E refers to Exhibit 1018, “which shows that customers who faced increased total charges on CPP absent CPP usage reductions still signed up for PG&E’s current voluntary CPP tariff. Moreover, those customers as well as structural winners for the PG&E CPP tariff, have already succeeded in reducing their electric usage during CPP hours.” (PG&E Reply, p. 6.)

TURN’s comments extend beyond the issues of the instant proceeding and tie in TURN’s policy views regarding the desirability of critical peak pricing overall, the relative efficacy of other demand reduction programs including the institution of a separate superpeak time-of-use period, the costs and benefits of the advanced metering initiative, and the applicability of critical peak pricing to other classes of customers. (TURN comments, pp. 2-4.) TURN further states that its “primary recommendation is to delay *any* implementation of CPP for all customers.” (TURN comments, p. 7, emphasis added.) SCE responds to TURN’s arguments by noting that TURN’s essential position is that it wishes to preserve the status quo and opposes the implementation of new critical peak pricing (CPP) programs.

## **5.2. Consistent with the Law**

The parties to the PG&E/SCE settlement state that the settlement “is consistent with all applicable statutes and prior Commission decisions. In particular, although D.05-04-053 directed the Utilities to file opt-out critical peak pricing showings, it did not preclude presentation and consideration of other critical peak pricing approaches.” (PG&E/SCE Motion, p. 4.) The parties to the SDG&E settlement identify Ordering Paragraphs 3, 4, 5, and 8 as the key ordering paragraphs from D.05-04-053 and then state how the settlement meets each criteria.

TURN argues that the PG&E/SCE settlement is not consistent with the law and Commission policy because the “voluntary nature” of the settlement’s critical peak pricing rate conflicts with the explicit order of D.05-04-053 to implement default tariffs. TURN acknowledges that SDG&E’s settlement rate is called a default tariff; however, TURN points out that “the terms of the settlement do everything possible to ensure that any customer who may be disadvantaged by the tariff will opt-out with no cost and as little administrative burden as possible.” (TURN Comments, p. 6.)

## **5.3. In the Public Interest**

The parties state that the SDG&E settlement is in the public interest because “it strikes a balance between moving forward with the Commission’s demand response objectives while providing Customers with a gradual introduction to new pricing structures. The Settlement Agreement also provides for SDG&E to educate Customers on all of the demand response programs available, thus furthering the important public interest goal of cultivating demand response programs” and ensuring that no customer unwittingly fails to choose to remain of the default tariff. (SDG&E Motion, p. 6.) The parties state

that the PG&E/SCE settlement “is a reasonable compromise of the respective Settling Parties’ interests and litigation positions” and that the Commission should therefore find the settlement in the public interest.

#### **5.4. Discussion**

For the reasons stated above, the settling parties urged the Commission to expeditiously grant the motions approving the settlements. TURN opposes adopting the settlements.

Evaluating these settlements is difficult. The Settling Parties in each one represent all the parties who participated actively in the proceeding through preparation of testimony prior to the settlements being filed. The parties have negotiated in good faith to recommend a critical peak pricing structure that they believe complies with the intent of D.05-04-053, but incorporates the realities of large customer capital and investment patterns, and resistance to change.

TURN is the only opponent to the settlements, and its reasons have much to do with wider issues of applicability of CPP to other customer classes, more than with the proposed settlements themselves. In fact, TURN indicates a preference for adoption of the settlements if doing so is accompanied by an abandonment of CPP for smaller customers. (TURN Comments, p. 3.) TURN conducted cross-examination on the settlements, but did not present its own affirmative testimony. Some of the points raised by TURN in its comments on the motions to adopt the settlements relate to its broader concerns and appear to be related to its understanding of the Commission’s policy direction with respect to demand response programs generally, and applicability of critical peak pricing rates for small customers specifically. Neither of those issues is part of this proceeding, which is designed to implement the guidance found in D.05-04-053.

We find that the proposed settlements are in the public interest because they move public policy in the direction stated in D.05-04-053 and other previous orders to achieve demand reduction in critical peak periods, at least in part through the application of a better price signal to affected customers during critical peak periods. In addition, we are pleased that most parties, with the exception of TURN, were able to reach settlements that promote these policies. Commission policy generally favors settlement of disputes if they are fair and reasonable in light of the whole record, as required by Rule 51.1(e) of the Commission's Rules of Practice and Procedure. Settlements do not always achieve the public policy goals of the Commission, and we do not hesitate to decline to adopt settlements when they do not meet our goals. In particular, in this case, there is the question of whether a settlement that does not meet the letter of Ordering Paragraph 8 of D.05-04-053, can be in the public interest.

Ordering Paragraph 8 of D.05-04-053 requires that CPP be the default position, with customers having the ability to opt out of CPP at no cost to themselves. The PG&E/SCE proposed settlement goes the other way, with the default position that customers would remain on the existing TOU rate, and they would have the ability to opt into the CPP program at no cost. We find that the parties have made reasonable arguments in favor of the opt-in position. In particular, the settlement motion argues that the opt-in provision allows for better coordination of all demand-side offerings. Moreover, there was uncontradicted testimony in the record that some programs in other states that have taken the default-in, opt-out position have resulted in opt-out rates in excess of 90-percent. (Witness Mayers, RT 520:12-13; Witness Garwacki, RT 524:8-10.) In light of this evidence, we do not see a need to reject the PG&E/SCE settlement over this divergence from the direction of Ordering Paragraph 8.



The SDG&E settlement provides a CPP tariff as the default tariff applicable to all Commercial and Industrial customers with loads greater than or equal to 200kW. This default position is consistent with Ordering Paragraph 8 of D.05-04-053. Yet the two settlements are not very far apart in their careful treatment of their customers. The SDG&E plan is for the default switch to CPP service will happen only after each customer is given an opportunity to say “No.” In the event of a dispute about whether a customer was contacted, the settlement provides for the burden to be on SDG&E to demonstrate that contact was made.

Witness Barkovich discusses the difficulty of communicating with large industrial customers regarding tariff choices:

For a utility to communicate with a customer about a default rate, letting them know that they will be on this rate unless they choose to do something else, it's often difficult with a particular corporation – and I'll deal now with an industrial corporation because that's what I'm familiar with – to figure out who the right person is to talk to to get the decision about whether the customer wants to be on the rate or not.

You have the person – the plant manager. You may have a different person involved in paying the utility bills. You may have an energy person if the corporation has multiple sites, who is at headquarters, who is involved in decisions. And I think it's important to make sure that in a situation that – where the customer will be on the CPP rate unless they make an affirmative choice to get off the CPP rate, it's very important for the utility to establish the right person or persons to talk to in the company or there could be a decision that doesn't make the customer happy just because they found the wrong person. The decisionmaking is multi-faceted, and it's really easy just to call somebody up and get the wrong person. (RT 523:8-524:1.)

With the careful consideration of communication with the customer as such an important element in both the PG&E/SCE settlement and the SDG&E settlement, the specific placement of the default position becomes less important than the idea that both settlements move public policy in the direction of offering a better CPP option than currently exists. We will accept that settling parties have come to reasonable conclusions about communication between the utilities and their customers and the default position of whether the customer should automatically be placed on the CPP rate or not.

On balance, we believe that adopting the settlements serves the public interest and satisfies the public policy objectives more effectively than rejecting the settlements and imposing an alternative policy. Adopting the settlements allows us to move towards our goal of improving price responsiveness of all customers.

Communication with customers regarding CPP is made more difficult by the fact that CPP adds complexity to energy and power usage decisions and planning on the part of customers. We believe that electric service customers, whether they adopt CPP or not, will be better served if they are able to gauge the efficacy of their decision by seeing an after-the-fact analysis of the impact of their decisions. Therefore, we will require the utilities to provide all of the customers in the affected classes with educational material and a bill analysis at the end of 12 months of this program. The material should indicate how the CPP tariff operates and the number and specific dates of CPP events that were called over the 12-month period. The billing analysis should show how much the customer paid for electric service in each month, and how much the customer would have paid had the customer adopted/not adopted the CPP tariff given actual usage. In addition, the analysis should indicate how much the customer could have

saved under reasonable assumptions about changed usage. Each utility should file by advice letter its proposed assumptions appropriate for changed usage patterns in the presence of CPP.

## **6. Petition to Modify**

On November 14, 2005, PG&E filed a petition to modify D.05-04-053, Ordering Paragraph 8, in the event that the settlement is adopted and PG&E is authorized to implement voluntary critical peak pricing tariffs. SDG&E opposes modification of the decision, arguing that it is an important step in the Commission's long standing movement towards more effective time-based rates. Any accommodations needed to adopt the PG&E/SCE settlement should be addressed in the specific order adopting the settlement rather than through making modifications to the general policy set forth in D.05-04-053. PG&E responds that it acknowledges that the Commission can prevent conflict between Ordering Paragraph 8 and the PG&E CPP settlement by including a specific ordering paragraph in the CPP settlement decision which would make Ordering Paragraph 8 inapplicable to PG&E and its 2007 GRC Phase 2 proceeding. We adopt this latter approach and make no change to D.05-04-053.

## **7. Comments on the Alternate Proposed Decision**

The alternate proposed decision of Commissioner Bohn in this matter was mailed to the parties in accordance with Section 311(e) of the Public Utilities Code and Rule 77.1 of the Commission's Rules of Practice and Procedure. Comments were filed by a group collectively known as the Joint Parties (San Diego Gas & Electric company, the Building Owners and Managers Association, the California Large Energy Consumers Association, the California Manufacturers and Technology Association, the City of San Diego, the Energy Producers and Users Coalition, the Indicated Commercial Parties, the Industrial

Environmental Association, J.C. Penney Company, Inc., the Silicon Valley Leadership Group, and Wal-Mart Stores, Inc.), California Department of General Services, California Farm Bureau Federation, California League of Food Processors, California Retailers Association, Los Angeles Unified School District, Pacific Gas and Electric Company, San Francisco Bay Area Rapid Transit District, Silicon Valley Leadership Group (SVLG), Southern California Edison Company, and TURN. Energy Producers and Users Coalition filed comments on May 8, accepted as reply comments.

A total of 12 sets of comments were filed. With the exception of TURN comments, all are supportive of the alternate decision. The TURN comments reflect the arguments the organization raised previously against the settlements as discussed in the main body of this decision. Those arguments raise large policy questions about the general policy direction of the Commission as well as about this decision. We disagree.

## **8. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in these proceedings.

### **Findings of Fact**

1. Two motions to accept settlements to resolve critical peak pricing rate design issues were filed.
2. The proposed settlement of PG&E and SCE would establish a voluntary critical peak pricing tariff structure (opt-in), rather than a default rate as directed in D.05-04-053.
3. The proposed settlement of SDG&E establishes a default critical peak pricing tariff structure (opt-out) as directed in D.05-04-053.

4. Both settlements reflect a movement in favor of the Commission's goal of better price signals to customers regarding the costs of supplying energy during critical peak periods.

5. TURN opposes both settlements.

6. Educational materials and a bill analysis would help electric service customers in the affected classes to better assess the benefits possible under CPP.

### **Conclusions of Law**

1. The proposed settlements are reasonable in light of the whole record.

2. The SDG&E proposed settlement is consistent with the law.

3. The PG&E/SCE proposed settlement can be made fully consistent with the law through the granting of an exemption for PG&E to Ordering Paragraph 8 of D.05-04-053 from application of that Ordering Paragraph to PG&E's 2007 GRC Phase 2 proceeding.

4. The proposed settlements are in the public interest.

5. The electric service customers should receive educational materials and a billing analysis after the CPP option has been in effect for 12 months.

6. PG&E's Petition to Modify D.05-04-053 should be denied.

## **O R D E R**

### **IT IS ORDERED** that:

1. The November 14, 2005 Motions to Accept Settlements are granted.

2. Ordering Paragraph 8 of Decision (D.) 05-04-053 shall not apply to Pacific Gas and Electric Company (PG&E) in its 2007 General Rate Case (GRC) Phase 2 proceeding.

3. Each utility shall file an Advice Letter to implement the terms of its settlement no later than October 1, 2006, with an effective date of January 1, 2007.

4. Each utility shall prepare educational materials and a billing analysis for affected customers at the end of 12 months of operation of this program as discussed above. The utilities should file by advice letter 30 days after the effective date of this order its reasonable assumptions for changes in electric usage during critical peak periods in the presence of CPP.

5. PG&E's Petition to Modify D.05-04-053 is denied.

6. These proceedings are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX A

### List of Appearances

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**(END OF APPENDIX A)**